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# World Summit on Sustainable Development

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**General debate**

## Letter dated 6 August 2002 from the Permanent Representative of Bangladesh to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General of the United Nations

We have the honour to transmit the ILA New Delhi Declaration of principles of international law relating to sustainable development (see annex), which was adopted by the International Law Association at its 70th Conference held in New Delhi from 2 to 6 April 2002, and would like to request that the present letter and its annex be circulated as a document of the World Summit on Sustainable Development, and of the fifty-seventh session of the General Assembly, under item 89, "Environment and sustainable development", of the provisional agenda.

(*Signed*) Iftekhar Ahmed **Chowdhury**
Ambassador
Permanent Representative

(*Signed*) Arjan **Hamburger**
Chargé d'affaires a.i.

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**Annex to the letter dated 6 August 2002 from the Permanent Representative of Bangladesh to the United Nations and the Chargé d'affaires a.i of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General of the United Nations**

# ILA NEW DELHI DECLARATION OF PRINCIPLES OF INTERNATIONAL LAW RELATING TO SUSTAINABLE DEVELOPMENT

The 70th Conference of the International Law Association, held in New Delhi, India, 2-6 April 2002,

**NOTING** that sustainable development is now widely accepted as a global objective and that the concept has been amply recognized in various international and national legal instruments, including treaty law and jurisprudence at international and national levels,

**EMPHASIZING** that sustainable development is a matter of common concern both to developing and industrialized countries and that, as such, it should be integrated into all relevant fields of policy in order to realize the goals of environmental protection, development and respect for human rights, emphasizing the critical relevance of the gender dimension in all these areas and recognizing the need to ensure practical and effective implementation,

**TAKING THE VIEW** that there is a need for a comprehensive international law perspective on integration of social, economic, financial and environmental objectives and activities and that enhanced attention should be paid to the interests and needs of developing countries, particularly least developed countries, and those adversely affected by environmental, social and developmental considerations,

**RECALLING** that in its Report on *Our Common Future* (1987), the World Commission on Environment and Development identified the objective of sustainable development as being '...to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs',

**CONCERNED** about growing economic and social inequalities between and within States as well as about the ability of many developing countries, particularly least developed countries, to participate in the global economy,

**RECOGNIZING** the need to further develop international law in the field of sustainable development, with a view to according due weight to both the developmental and environmental concerns, in order to achieve a balanced and comprehensive international law on sustainable development, as called for in Principle 27 of the Rio Declaration and Chapter 39 of Agenda 21 of the UN Conference on Environment and Development as well as in the various resolutions on legal aspects of sustainable development of the International Law Association,

**AFFIRMING** that consideration should be given to the interaction of States, intergovernmental organizations, peoples and individuals, industrial concerns and other non-governmental organizations as participants in multilateral development co-operation,

**AWARE** of the concern expressed by the UN General Assembly during its 19th Special Session in 1997 to review progress achieved since the 1992 UN Conference on Environment and Development that 'the overall trends for sustainable development are worse today than they were in 1992'; and of the General Assembly's call 'to continue the progressive development and, as and where appropriate, codification of international law related to sustainable development',

**RECOGNIZING** that the forthcoming World Summit on Sustainable Development, convened by the United Nations General Assembly in Johannesburg, South Africa, 26 August-4 September 2002, provides an important opportunity for addressing the role of international law in the pursuance of sustainable development,

**REAFFIRMING** the ILA's Seoul Declaration on Progressive Development of Principles of Public International Law Relating to a New International Economic Order, as adopted by the 62nd Conference of the International Law Association held in Seoul in 1986,

**TAKING INTO ACCOUNT** the United Nations General Assembly Declaration on the Right to Development of 1986,

**TAKING FURTHER INTO ACCOUNT** the Rio Declaration on Environment and Development and related documents ensuing from the 1992 UN Conference on Environment and Development, as well as the final documents resulting from the series of world conferences on social progress for development (Copenhagen, 1993), human rights (Vienna, 1993), population and development (Cairo, 1994), small islands states and sustainable development (Barbados, 1994), women and development (Beijing, 1995), least-developed countries (Brussels, 2001) and financing for development (Monterrey, 2002), respectively,

**EXPRESSES** the view that the objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations,

**IS OF THE OPINION** that the realization of the international bill of human rights, comprising economic, social and cultural rights, civil and political rights and peoples' rights, is central to the pursuance of sustainable development,

**CONSIDERS** that the application and, where relevant, consolidation and further development of the following principles of international law relevant to the activities of all actors involved would be instrumental in pursuing the objective of sustainable development in an effective way:

## 1. The duty of States to ensure sustainable use of natural resources

1.1 It is a well-established principle that, in accordance with international law, all States have the sovereign right to manage their own natural resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause significant damage to the environment of other States or of areas beyond the limits of national jurisdiction.

1.2 States are under a duty to manage natural resources, including natural resources within their own territory or jurisdiction, in a rational, sustainable and safe way so as to contribute to the development of their peoples, with particular regard for the rights of indigenous peoples, and to the conservation and sustainable use of natural resources and the protection of the environment, including ecosystems. States must take into account the needs of future generations in determining the rate of use of natural resources. All relevant actors (including States, industrial concerns and other components of civil society) are under a duty to avoid wasteful use of natural resources and promote waste minimization policies.

1.3 The protection, preservation and enhancement of the natural environment, particularly the proper management of climate system, biological diversity and fauna and flora of the Earth, are the common concern of humankind. The resources of outer space and celestial bodies and of the sea-bed, ocean floor and subsoil thereof beyond the limits of national jurisdiction are the common heritage of humankind.

## 2. The principle of equity and the eradication of poverty

2.1 The principle of equity is central to the attainment of sustainable development. It refers to both *inter-generational equity* (the right of future generations to enjoy a fair level of the common patrimony) and *intra-generational equity* (the right of all peoples within the current generation of fair access to the current generation's entitlement to the Earth's natural resources).

2.2 The present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind. 'Benefit' in this context is to be understood in its broadest meaning as including, *inter alia*, economic, environmental, social and intrinsic benefit.

2.3 The right to development must be implemented so as to meet developmental and environmental needs of present and future generations in a sustainable and equitable manner. This includes the duty to co-operate for the eradication of poverty in accordance with Chapter IX on International Economic and Social Co-operation of the Charter of the United Nations and the Rio Declaration on Environment and Development as well as the duty to co-operate for global sustainable development and the attainment of equity in the development opportunities of developed and developing countries.

2.4 Whilst it is the primary responsibility of the State to aim for conditions of equity within its own population and to ensure, as a minimum, the eradication of poverty, all States which are in a position to do so have a further responsibility, as recognized by the Charter of the United Nations and the Millennium Declaration of the United Nations, to assist States in achieving this objective.

## 3. The principle of common but differentiated responsibilities

3.1 States and other relevant actors have common but differentiated responsibilities. All States are under a duty to co-operate in the achievement of global sustainable development and the protection of the environment. International organizations, corporations (including in particular transnational corporations), non-governmental organizations and civil society should co-operate in and contribute

to this global partnership. Corporations have also responsibilities pursuant to the polluter-pays principle.

3.2 Differentiation of responsibilities, whilst principally based on the contribution that a State has made to the emergence of environmental problems, must also take into account the economic and developmental situation of the State, in accordance with paragraph 3.3.

3.3 The special needs and interests of developing countries and of countries with economies in transition, with particular regard to least developed countries and those affected adversely by environmental, social and developmental considerations, should be recognized.

3.4 Developed countries bear a special burden of responsibility in reducing and eliminating unsustainable patterns of production and consumption and in contributing to capacity-building in developing countries, *inter alia* by providing financial assistance and access to environmentally sound technology. In particular, developed countries should play a leading role and assume primary responsibility in matters of relevance to sustainable development.

**4. The principle of the precautionary approach to human health, natural resources and ecosystems**

4.1 A precautionary approach is central to sustainable development in that it commits States, international organizations and the civil society, particularly the scientific and business communities, to avoid human activity which may cause significant harm to human health, natural resources or ecosystems, including in the light of scientific uncertainty.

4.2 Sustainable development requires that a precautionary approach with regard to human health, environmental protection and sustainable utilization of natural resources should include:
(a) accountability for harm caused (including, where appropriate, State responsibility); (b) planning based on clear criteria and well-defined goals;
(c) consideration in an environmental impact assessment of all possible means to achieve an objective (including, in certain instances, not proceeding with an envisaged activity); and
(d) in respect of activities which may cause serious long-term or irreversible harm, establishing an appropriate burden of proof on the person or persons carrying out (or intending to carry out) the activity.

4.3 Decision-making processes should always endorse a precautionary approach to risk management and in particular should include the adoption of appropriate precautionary measures.

4.4 Precautionary measures should be based on up-to-date and independent scientific judgment and be transparent. They should not result in economic protectionism. Transparent structures should be established which involve all interested parties, including non-state actors, in the consultation process. Appropriate review by a judicial or administrative body should be available.

**5. The principle of public participation and access to information and justice**

5.1 Public participation is essential to sustainable development and good governance in that it is a condition for responsive, transparent and accountable governments as well a condition for the active engagement of equally responsive, transparent and accountable civil society

organizations, including industrial concerns and trade unions. The vital role of women in sustainable development should be recognized.

5.2 Public participation in the context of sustainable development requires effective protection of the human right to hold and express opinions and to seek, receive and impart ideas. It also requires a right of access to appropriate, comprehensible and timely information held by governments and industrial concerns on economic and social policies regarding the sustainable use of natural resources and the protection of the environment, without imposing undue financial burdens upon the applicants and with due consideration for privacy and adequate protection of business confidentiality.

5.3 The empowerment of peoples in the context of sustainable development requires access to effective judicial or administrative procedures in the State where the measure has been taken to challenge such measure and to claim compensation. States should ensure that where transboundary harm has been, or is likely to be, caused, individuals and peoples affected have non-discriminatory access to the same judicial and administrative procedures as would individuals and peoples of the State in which the harm is caused.

## 6. The principle of good governance

6.1 The principle of good governance is essential to the progressive development and codification of international law relating to sustainable development. It commits States and international organizations:
(a) to adopt democratic and transparent decision-making procedures and financial accountability;
(b) to take effective measures to combat official or other corruption;
(c) to respect the principle of due process in their procedures and to observe the rule of law and human rights; and
(d) to implement a public procurement approach according to the WTO Code on Public Procurement.

6.2 Civil society and non-governmental organizations have a right to good governance by States and international organizations. Non-state actors should be subject to internal democratic governance and to effective accountability.

6.3 Good governance requires full respect for the principles of the 1992 Rio Declaration on Environment and Development as well as the full participation of women in all levels of decision-making. Good governance also calls for corporate social responsibility and socially responsible investments as conditions for the existence of a global market aimed at a fair distribution of wealth among and within communities.

## 7. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

7.1 The principle of integration reflects the interdependence of social, economic, financial, environmental and human rights aspects of principles and rules of international law relating to sustainable development as well as of the interdependence of the needs of current and future generations of humankind.

7.2 All levels of governance – global, regional, national, sub-national and local – and all sectors of society should implement the integration principle, which is essential to the achievement of sustainable development.

7.3 States should strive to resolve apparent conflicts between competing economic, financial, social and environmental considerations, whether through existing institutions or through the establishment of appropriate new institutions.

7.4 In their interpretation and application, the above principles are interrelated and each of them should be construed in the context of the other principles of this Declaration. Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter of the United Nations and the rights of peoples under that Charter.

NEW DELHI, 6 APRIL 2002.